

103D CONGRESS
1ST SESSION

S. 414

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM (for himself, Mr. MITCHELL, Mrs. KASSEBAUM, Mr. KOHL, Mr. CHAFEE, Mr. KENNEDY, Mr. SIMON, Mr. PELL, Mr. WELLSTONE, Mr. AKAKA, Mr. GLENN, Mr. LEVIN, Mr. HARKIN, Mr. LAUTENBERG, Ms. MOSELEY-BRAUN, Mrs. BOXER, Mr. HATFIELD, Mr. FEINGOLD, Mr. DODD, Mrs. FEINSTEIN, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. BRADLEY, Mrs. MURRAY, Mr. INOUE, Mr. WARNER, Ms. MIKULSKI, and Mr. KERRY) introduced the following bill; which was read the first time

A BILL

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brady Handgun Vio-
5 lence Prevention Act”.

1 **SEC. 2. FEDERAL FIREARMS LICENSEE REQUIRED TO CON-**
2 **DUCT CRIMINAL BACKGROUND CHECK BE-**
3 **FORE TRANSFER OF FIREARM TO**
4 **NONLICENSEE.**

5 (a) INTERIM PROVISION.—

6 (1) IN GENERAL.—Section 922 of title 18,
7 United States Code, is amended by adding at the
8 end the following:

9 “(s)(1) Beginning on the date that is ninety days
10 after the date of enactment of this subsection and ending
11 on the day before the date that the Attorney General cer-
12 tifies under section 3 of the Brady Handgun Violence Pre-
13 vention Act that the national instant criminal background
14 check system is established (except as provided in para-
15 graphs (2) and (3) of such section), it shall be unlawful
16 for any licensed importer, licensed manufacturer, or li-
17 censed dealer to sell, deliver, or transfer a handgun to an
18 individual who is not licensed under section 923, unless—

19 “(A) after the most recent proposal of such
20 transfer by the transferee—

21 “(i) the transferor has—

22 “(I) received from the transferee a
23 statement of the transferee containing the
24 information described in paragraph (3);

1 “(II) verified the identity of the trans-
2 feree by examining the identification docu-
3 ment presented;

4 “(III) within one day after the trans-
5 feree furnishes the statement, provided no-
6 tice of the contents of the statement to the
7 chief law enforcement officer of the place
8 of residence of the transferee; and

9 “(IV) within one day after the trans-
10 feree furnishes the statement, transmitted
11 a copy of the statement to the chief law
12 enforcement officer of the place of resi-
13 dence of the transferee; and

14 “(ii)(I) five business days (as defined by
15 days in which State offices are open) have
16 elapsed from the date the transferor furnished
17 notice of the contents of the statement to the
18 chief law enforcement officer, during which pe-
19 riod the transferor has not received information
20 from the chief law enforcement officer that re-
21 ceipt or possession of the handgun by the trans-
22 feree would be in violation of Federal, State, or
23 local law; or

24 “(II) the transferor has received notice
25 from the chief law enforcement officer that the

1 officer has no information indicating that re-
2 ceipt or possession of the handgun by the trans-
3 feree would violate Federal, State, or local law;

4 “(B) the transferee has presented to the trans-
5 feror a written statement, issued by the chief law en-
6 forcement officer of the place of residence of the
7 transferee during the ten-day period ending on the
8 date of the most recent proposal of such transfer by
9 the transferee, stating that the transferee requires
10 access to a handgun because of a threat to the life
11 of the transferee or of any member of the household
12 of the transferee;

13 “(C)(i) the transferee has presented to the
14 transferor a permit that—

15 “(I) allows the transferee to possess a
16 handgun; and

17 “(II) was issued not more than five years
18 earlier by the State in which the transfer is to
19 take place; and

20 “(ii) the law of the State provides that such a
21 permit is to be issued only after an authorized gov-
22 ernment official has verified that the information
23 available to such official does not indicate that pos-
24 session of a handgun by the transferee would be in
25 violation of the law;

1 “(D) the law of the State requires that, before
2 any licensed importer, licensed manufacturer, or li-
3 censed dealer completes the transfer of a handgun to
4 an individual who is not licensed under section 923,
5 an authorized government official verify that the in-
6 formation available to such official does not indicate
7 that possession of a handgun by the transferee
8 would be in violation of law, except that this sub-
9 paragraph shall not apply to a State that, on the
10 date of certification pursuant to section 3 of the
11 Brady Handgun Violence Prevention Act, is not in
12 compliance with the timetable established pursuant
13 to section 3 of such Act;

14 “(E) the Secretary has approved the transfer
15 under section 5812 of the Internal Revenue Code of
16 1986; or

17 “(F) on application of the transferor, the Sec-
18 retary has certified that compliance with subpara-
19 graph (A)(i)(III) is impracticable because—

20 “(i) the ratio of the number of law enforce-
21 ment officers of the State in which the transfer
22 is to occur to the number of square miles of
23 land area of the State does not exceed 0.0025;

24 “(ii) the business premises of the trans-
25 feror at which the transfer is to occur are ex-

1 tremely remote in relation to the chief law en-
2 forcement officer; and

3 “(iii) there is an absence of telecommuni-
4 cations facilities in the geographical area in
5 which the business premises are located.

6 “(2) A chief law enforcement officer to whom a trans-
7 feror has provided notice pursuant to paragraph
8 (1)(A)(i)(III) shall make a reasonable effort to ascertain
9 within five business days whether the transferee has a
10 criminal record or whether there is any other legal impedi-
11 ment to the transferee’s receiving a handgun, including
12 research in whatever State and local recordkeeping sys-
13 tems are available and in a national system designated by
14 the Attorney General.

15 “(3) The statement referred to in paragraph
16 (1)(A)(i)(I) shall contain only—

17 “(A) the name, address, and date of birth ap-
18 pearing on a valid identification document (as de-
19 fined in section 1028(d)(1)) of the transferee con-
20 taining a photograph of the transferee and a de-
21 scription of the identification used;

22 “(B) a statement that transferee—

23 “(i) is not under indictment for, and has
24 not been convicted in any court of, a crime pun-

1 ishable by imprisonment for a term exceeding
2 one year;

3 “(ii) is not a fugitive from justice;

4 “(iii) is not an unlawful user of or addicted
5 to any controlled substance (as defined in sec-
6 tion 102 of the Controlled Substances Act);

7 “(iv) has not been adjudicated as a mental
8 defective or been committed to a mental institu-
9 tion;

10 “(v) is not an alien who is illegally or un-
11 lawfully in the United States;

12 “(vi) has not been discharged from the
13 Armed Forces under dishonorable conditions;
14 and

15 “(vii) is not a person who, having been a
16 citizen of the United States, has renounced
17 such citizenship;

18 “(C) the date the statement is made; and

19 “(D) notice that the transferee intends to ob-
20 tain a handgun from the transferor.

21 “(4) Any transferor of a handgun who, after such
22 transfer, receives a report from a chief law enforcement
23 officer containing information that receipt or possession
24 of the handgun by the transferee violates Federal, State,
25 or local law shall immediately communicate all information

1 the transferor has about the transfer and the transferee
2 to—

3 “(A) the chief law enforcement officer of the
4 place of business of the transferor; and

5 “(B) the chief law enforcement officer of the
6 place of residence of the transferee.

7 “(5) Any transferor who receives information, not
8 otherwise available to the public, in a report under this
9 subsection shall not disclose such information except to
10 the transferee, to law enforcement authorities, or pursuant
11 to the direction of a court of law.

12 “(6)(A) Any transferor who sells, delivers, or other-
13 wise transfers a handgun to a transferee shall retain the
14 copy of the statement of the transferee with respect to
15 the handgun transaction, and shall retain evidence that
16 the transferor has complied with subclauses (III) and (IV)
17 of paragraph (1)(A)(i) with respect to the statement.

18 “(B) Unless the chief law enforcement officer to
19 whom a statement is transmitted under paragraph
20 (1)(A)(i)(IV) determines that a transaction would violate
21 Federal, State, or local law—

22 “(i) the officer shall, within twenty business
23 days after the date the transferee made the state-
24 ment on the basis of which the notice was provided,

1 destroy the statement and any record containing in-
2 formation derived from the statement;

3 “(ii) the information contained in the statement
4 shall not be conveyed to any person except a person
5 who has a need to know in order to carry out this
6 subsection; and

7 “(iii) the information contained in the state-
8 ment shall not be used for any purpose other than
9 to carry out this subsection.

10 “(7) A chief law enforcement officer or other person
11 responsible for providing criminal history background in-
12 formation pursuant to this subsection shall not be liable
13 in an action at law for damages—

14 “(A) for failure to prevent the sale or transfer
15 of a handgun to a person whose receipt or posses-
16 sion of the handgun is unlawful under this section;
17 or

18 “(B) for preventing such a sale or transfer to
19 a person who may lawfully receive or possess a
20 handgun.

21 “(8) For purposes of this subsection, the term ‘chief
22 law enforcement officer’ means the chief of police, the
23 sheriff, or an equivalent officer or the designee of any such
24 individual.

1 “(9) The Secretary shall take necessary actions to en-
2 sure that the provisions of this subsection are published
3 and disseminated to licensed dealers, law enforcement offi-
4 cials, and the public.”.

5 (2) HANDGUN DEFINED.—Section 921(a) of
6 such title is amended by adding at the end the fol-
7 lowing:

8 “(29) The term ‘handgun’ means—

9 “(A) a firearm which has a short stock and is
10 designed to be held and fired by the use of a single
11 hand; and

12 “(B) any combination of parts from which a
13 firearm described in subparagraph (A) can be as-
14 sembled.”.

15 (b) PERMANENT PROVISION.—Section 922 of title
16 18, United States Code, as amended by subsection (a)(1)
17 of this section, is amended by adding at the end the
18 following:

19 “(t)(1) Beginning on the date that the Attorney Gen-
20 eral certifies under section 3 of the Brady Handgun Vio-
21 lence Prevention Act that the national instant criminal
22 background check system is established (except as pro-
23 vided in paragraphs (2) and (3) of such section), a li-
24 censed importer, licensed manufacturer, or licensed dealer

1 shall not transfer a firearm to any other person who is
2 not such a licensee, unless—

3 “(A) before the completion of the transfer, the
4 licensee contacts the national instant criminal back-
5 ground check system established under section 3 of
6 such Act;

7 “(B) the system notifies the licensee that the
8 system has not located any record that demonstrates
9 that the receipt of a firearm by such other person
10 would violate subsection (g) or (n) of this section or
11 any State or local law; and

12 “(C) the transferor has verified the identity of
13 the transferee by examining a valid identification
14 document (as defined in section 1028(d)(1) of this
15 title) of the transferee containing a photograph of
16 the transferee.

17 “(2) Paragraph (1) shall not apply to a firearm
18 transfer between a licensee and another person if—

19 “(A)(i) such other person has presented to the
20 licensee a permit that—

21 “(I) allows such other person to possess a
22 firearm; and

23 “(II) was issued not more than five years
24 earlier by the State in which the transfer is to
25 take place; and

1 “(ii) the law of the State provides that such a
2 permit is to be issued only after an authorized gov-
3 ernment official has verified that the information
4 available to such official does not indicate that pos-
5 session of a firearm by such other person would be
6 in violation of law;

7 “(B) the Secretary has approved the transfer
8 under section 5812 of the Internal Revenue Code of
9 1986; or

10 “(C) on application of the transferor, the Sec-
11 retary has certified that compliance with paragraph
12 (1)(A) is impracticable because—

13 “(i) the ratio of the number of law enforce-
14 ment officers of the State in which the transfer
15 is to occur to the number of square miles of
16 land area of the State does not exceed 0.0025;

17 “(ii) the business premises of the licensee
18 at which the transfer is to occur are extremely
19 remote in relation to the chief law enforcement
20 officer (as defined in subsection (s)(8)); and

21 “(iii) there is an absence of telecommuni-
22 cations facilities in the geographical area in
23 which the business premises are located.

24 “(3) If the national instant criminal background
25 check system notifies the licensee that the information

1 available to the system does not demonstrate that the re-
2 ceipt of a firearm by such other person would violate sub-
3 section (g) or (n), and the licensee transfers a firearm to
4 such other person, the licensee shall include in the record
5 of the transfer the unique identification number provided
6 by the system with respect to the transfer.

7 “(4) In addition to the authority provided under sec-
8 tion 923(e), if the licensee knowingly transfers a firearm
9 to such other person and knowingly fails to comply with
10 paragraph (1) of this subsection with respect to the trans-
11 fer and, at the time such other person most recently pro-
12 posed the transfer, the national instant criminal back-
13 ground check system was operating and information was
14 available to the system demonstrating that receipt of a
15 firearm by such other person would violate subsection (g)
16 or (n) of this section, the Secretary may, after notice and
17 opportunity for a hearing, suspend for not more than six
18 months or revoke any license issued to the licensee under
19 section 923, and may impose on the licensee a civil fine
20 of not more than \$5,000.

21 “(5) Neither a local government nor an employee of
22 the Federal Government or of any State or local govern-
23 ment, responsible for providing information to the national
24 instant criminal background check system shall be liable
25 in an action at law for damages—

1 “(A) for failure to prevent the sale or transfer
 2 of a handgun to a person whose receipt or posses-
 3 sion of the handgun is unlawful under this section;
 4 or

5 “(B) for preventing such a sale or transfer to
 6 a person who may lawfully receive or possess a
 7 handgun.”.

8 (c) PENALTY.—Section 924(a) of title 18, United
 9 States Code, is amended—

10 (1) in paragraph (1), by striking “paragraph
 11 (2) or (3) of”; and

12 (2) by adding at the end the following:

13 “(5) Whoever knowingly violates subsection (s) or (t)
 14 of section 922 shall be fined not more than \$1,000, impris-
 15 oned for not more than 1 year, or both.”.

16 **SEC. 3. NATIONAL INSTANT CRIMINAL BACKGROUND**
 17 **CHECK SYSTEM.**

18 (a) ESTABLISHMENT OF SYSTEM.—The Attorney
 19 General of the United States shall establish a national in-
 20 stant criminal background check system that any licensee
 21 may contact for information on whether receipt of a fire-
 22 arm by a prospective transferee thereof would violate sub-
 23 section (g) or (n) of section 922 of title 18, United States
 24 Code, or any State or local law.

1 (b) EXPEDITED ACTION BY THE ATTORNEY GEN-
2 ERAL.—The Attorney General shall expedite—

3 (1) the upgrading and indexing of State crimi-
4 nal history records in the Federal criminal records
5 system maintained by the Federal Bureau of Inves-
6 tigation;

7 (2) the development of hardware and software
8 systems to link State criminal history check systems
9 into the national instant criminal background check
10 system established by the Attorney General pursuant
11 to this section; and

12 (3) the current revitalization initiatives by the
13 Federal Bureau of Investigation for technologically
14 advanced fingerprint and criminal records identifica-
15 tion.

16 (c) PROVISION OF STATE CRIMINAL RECORDS TO
17 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
18 SYSTEM.—(1) Not later than six months after the date
19 of enactment of this Act, the Attorney General shall—

20 (A) determine the type of computer hardware
21 and software that will be used to operate the na-
22 tional instant criminal background check system and
23 the means by which State criminal records systems
24 will communicate with the national system;

1 (B) investigate the criminal records system of
2 each State and determine for each State a timetable
3 by which the State should be able to provide criminal
4 records on an on line capacity basis to the
5 national system;

6 (C) notify each State of the determinations
7 made pursuant to subparagraphs (A) and (B).

8 (2) The Attorney General shall require as a part of
9 the State timetable that the State achieve, by the end of
10 five years after the date of enactment of this Act, at least
11 80 percent currency of case dispositions in computerized
12 criminal history files for all cases in which there has been
13 an event of activity within the last five years and continue
14 to maintain such a system.

15 (d) NATIONAL SYSTEM CERTIFICATION.—(1) On the
16 date that is thirty months after the date of enactment of
17 this Act, and at any time thereafter, the Attorney General
18 shall determine whether—

19 (A) the national system has achieved at least
20 80 percent currency of case dispositions in computerized
21 criminal history files for all cases in which
22 there has been an event of activity within the last
23 five years on a national average basis; and

24 (B) the States are in compliance with the timetable
25 established pursuant to subsection (c),

1 and, if so, shall certify that the national system is estab-
2 lished.

3 (2) If, on the date of certification in paragraph (1)
4 of this subsection, a State is not in compliance with the
5 timetable established pursuant to subsection (c) of this
6 section, section 922(s) of title 18, United States Code,
7 shall remain in effect in such State and section 922(t) of
8 such title shall not apply to the State. The Attorney Gen-
9 eral shall certify if a State subject to the provisions of
10 section 922(s) under the preceding sentence achieves com-
11 pliance with its timetable after the date of certification
12 in paragraph (1) of this subsection, and section 922(s) of
13 title 18, United States Code, shall not apply to such State
14 and section 922(t) of such title shall apply to the State.

15 (3) Six years after the date of enactment of this Act,
16 the Attorney General shall certify whether or not a State
17 is in compliance with subsection (c)(2) of this section and
18 if the State is not in compliance, section 922(s) of title
19 18, United States Code, shall apply to the State and sec-
20 tion 922(t) of such title shall not apply to the State. The
21 Attorney General shall certify if a State subject to the pro-
22 visions of section 922(s) under the preceding sentence
23 achieves compliance with the standards in subsection
24 (c)(2) of this section, and section 922(s) of title 18, United

1 States Code, shall not apply to the State and section
2 922(t) of such title shall apply to the State.

3 (e) NOTIFICATION OF LICENSEES.—On establish-
4 ment of the system under this section, the Attorney Gen-
5 eral shall notify each licensee and the chief law enforce-
6 ment officer of each State of the existence and purpose
7 of the system and the means to be used to contact the
8 systems

9 (f) ADMINISTRATIVE PROVISIONS.—

10 (1) AUTHORITY TO OBTAIN OFFICIAL INFORMA-
11 TION.—Notwithstanding any other law, the Attorney
12 General may secure directly from any department or
13 agency of the United States such information on
14 persons for whom receipt of a firearm would violate
15 subsection (g) or (n) of section 922 of title 18,
16 United States Code, or any State or local law, as is
17 necessary to enable the system to operate in accord-
18 ance with this section. On request of the Attorney
19 General, the head of such department or agency
20 shall furnish such information to the system.

21 (2) OTHER AUTHORITY.—The Attorney General
22 shall develop such computer software, design and ob-
23 tain such telecommunications and computer hard-
24 ware, and employ such personnel, as are necessary

1 to establish and operate the system in accordance
2 with this section.

3 (g) CORRECTION OF ERRONEOUS SYSTEM INFORMA-
4 TION.—If the system established under this section in-
5 forms an individual contacting the system that receipt of
6 a firearm by a prospective transferee would violate sub-
7 section (g) or (n) of section 922 of title 18, United States
8 Code, or any State or local law, the prospective transferee
9 may request the Attorney General to provide the prospec-
10 tive transferee with the reasons therefor. Upon receipt of
11 such a request, the Attorney General shall immediately
12 comply with the request. The prospective transferee may
13 submit to the Attorney General information that to cor-
14 rect, clarify, or supplement records of the system with re-
15 spect to the prospective transferee. After receipt of such
16 information, the Attorney General shall immediately con-
17 sider the information, investigate the matter further, and
18 correct all erroneous Federal records relating to the pro-
19 spective transferee and give notice of the error to any Fed-
20 eral department or agency or any State that was the
21 source of such erroneous records.

22 (h) REGULATIONS.—After ninety days notice to the
23 public and an opportunity for hearing by interested par-
24 ties, the Attorney General shall prescribe regulations to

1 ensure the privacy and security of the information of the
2 system established under this section.

3 (i) PROHIBITION RELATING TO ESTABLISHMENT OF
4 REGISTRATION SYSTEMS WITH RESPECT TO FIRE-
5 ARMS.—No department, agency, officer, or employee of
6 the United States may—

7 (1) require that any record or portion thereof
8 maintained by the system established under this sec-
9 tion be recorded at or transferred to a facility
10 owned, managed, or controlled by the United States
11 or any State or political subdivision thereof; or

12 (2) use the system established under this sec-
13 tion to establish any system for the registration of
14 firearms, firearm owners, or firearm transactions or
15 dispositions, except with respect to persons, prohib-
16 ited by section 922(g) or (n) of title 18, United
17 States Code, from receiving a firearm.

18 (j) DEFINITIONS.—As used in this section:

19 (1) LICENSEE.—The term “licensee” means a
20 licensed importer, licensed manufacturer, or licensed
21 dealer under section 923 of title, 18, United States
22 Code.

23 (2) OTHER TERMS.—The terms “firearm”, “li-
24 censed importer”, “licensed manufacturer”, and “li-
25 censed dealer” have the meanings stated in section

1 921(a) (3), (9), (10), and (11), respectively, of title
2 18, United States Code.

3 **SEC. 4. FUNDING FOR IMPROVEMENT OF CRIMINAL**
4 **RECORDS.**

5 (a) IMPROVEMENTS IN STATE RECORDS.—

6 (1) USE OF FORMULA GRANTS.—Section 509(b)
7 of title I of the Omnibus Crime Control and Safe
8 Streets Act of 1968 (42 U.S.C. 3759(b)) is amend-
9 ed—

10 (A) in paragraph (2) by striking “and”
11 after the semicolon;

12 (B) in paragraph (3) by striking the period
13 and inserting “; and”; and

14 (C) by adding at the end the following new
15 paragraph:

16 “(4) the improvement of State record systems
17 and the sharing with the Attorney General of all of
18 the records described in paragraphs (1), (2), and (3)
19 of this subsection and the records required by the
20 Attorney General under section 3 of the Brady
21 Handgun Violence Prevention Act, for the purpose
22 of implementing such Act.”

23 (2) ADDITIONAL FUNDING.—

24 (A) GRANTS FOR THE IMPROVEMENT OF
25 CRIMINAL RECORDS.—The Attorney General,

1 through the Bureau of Justice Statistics, shall,
2 subject to appropriations and with preference to
3 States that as of the date of enactment of this
4 Act have the lowest percent currency of case
5 dispositions in computerized criminal history
6 files, make a grant to each State to be used—

7 (i) for the creation of a computerized
8 criminal history record system or improve-
9 ment of an existing system;

10 (ii) to improve accessibility to the na-
11 tional instant criminal background system;
12 and

13 (iii) upon establishment of the na-
14 tional system, to assist the State in the
15 transmittal of criminal records to the na-
16 tional system.

17 (B) AUTHORIZATION OF APPROPRIA-
18 TIONS.—There are authorized to be appro-
19 priated for grants under subparagraph (A) a
20 total of \$100,000,000 for fiscal year 1994 and
21 all fiscal years thereafter.

22 (b) WITHHOLDING STATE FUNDS.—Effective on the
23 date of enactment of this Act the Attorney General may
24 reduce by up to 50 percent the allocation to a State for
25 a fiscal year under title I of the Omnibus Crime Control

1 and Safe Streets Act of 1968 of a State that is not in
2 compliance with the timetable established for such State
3 under section 3 of this Act.

4 (c) WITHHOLDING OF DEPARTMENT OF JUSTICE
5 FUNDS.—If the Attorney General does not certify the na-
6 tional instant criminal background check system pursuant
7 to section 3(d)(1) by—

8 (1) thirty months after the date of enactment
9 of this Act the general administrative funds appro-
10 priated to the Department of Justice for the fiscal
11 year beginning in the calendar year in which the
12 date that is thirty months after the date of enact-
13 ment of this Act falls shall be reduced by 5 percent
14 on a monthly basis; and

15 (2) forty-two months after the date of enact-
16 ment of this Act the general administrative funds
17 appropriated to the Department of Justice for the
18 fiscal year beginning in the calendar year in which
19 the date that is forty-two months after the date of
20 enactment of this Act falls shall be reduced by 10
21 percent on a monthly basis.

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